JOHN LEE & ANOR. v. HENRY WONG JAN FOOK

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Syed Othman F.JJ.) September 10 & October 13, 1980]

[Kuching — Federal Court Civil Appeal No. 115 of 1980]

Torts — Libel — Qualified privilege — No allegation or proof of malice — Damages.

In this case the respondent brought an action for libel in respect of a letter sent by the Manager of a company, copies of which were sent *inter alia* to the Sarawak Commercial Employees Union. The appellants admitted that the words "Shady reputation" used in the letter was libellous and that the letter was published to the Union but they relied on the defence of qualified privilege. The respondent had earlier written to the Union complaining of the action of the Manager and asking the Union to intervene and the copy of the letter was sent to the Union to keep them in the picture. The learned trial judge held that that the appellants were liable and awarded $50,000 damages and costs. — See [1980] 2 M.L.J. 254. The appellants appealed.

Held, allowing the appeal: (1) the defence of qualified privilege must succeed in this case where the recipient of the defamatory statement was a trade union which has a contractual agreement with the commercial employers in Sarawak on behalf of their employees. Since the communication was restricted to the Union and the employers, it had not gone beyond the exigency of the occasion to avoid the privilege;

(2) there was no allegation of malice in this case and on the facts there was no evidence of malice;

(3) even assuming the appellants were liable, the damages awarded were too high and $8,000 would have been a sufficient recompense.

Cases referred to:-

(1) *Adam* v. *Ward* [1917] A.C. 309; [1916-17] All E.R. Rep. 157.
(2) *Pullman* v. *Hill Ltd.* [1891] 1 Q.B. 524.
(3) *Stuart* v. *Bell* [1891] 2 Q.B. 341.
(4) *Waring* v. *M'Caldin* [1873] Ir. R. 7 C.L. 282.
(5) *Campbell* v. *Cochrane* [1905] 8 F 205 (Ct. of sessions).
(6) *White* v. *Batey* (1892) 8 T.L.R. 698.
(7) *Scarll* v. *Dixon* [1864] 4 F & F 250; 176 E.R. 552.
(8) *Osborn* v. *Boulter* [1930] 2 K.B. 226.
(9) *Spill* v. *Maule* (1869) L.R. 4 Ex. 232.
(10) *Syed Husin Ali* v. *Syarikat Percetakan Utusan Melayu Berhad* [1973] 2 M.L.J. 56.
(11) *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.* [1978] 1 M.L.J. 75.

FEDERAL COURT.

John Ko (*Anthony Liew* with him) for the appellants.

T.O. Thomas (*John Chin* with him) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The respondent, Henry Wong Jan Fook, an erstwhile employee of the 2nd appellant, the North Borneo Trading Co. Ltd. (the Company) sued the Company and another employee, the originator of the following letter, for libel contained therein. The passage in that letter dated June 23, 1970 complained of is in these terms:

"Please be advised that our Managing Director, Mr. G. Creighton and other Directors in Head Office have expressed dissatisfaction that you have a shady reputation which is not within the policy of the company to retain and or engage such staff. Your general attitude towards your work as well as the unsatisfactory turnover which you produced after your return to Kuching will not justify your assumption that we would consider retrenchment in your case on the basis of 'First in, first out'."

It was written by John Lee, Manager of the Company's Branch at Kuching and the respondent's immediate superior. Carbon copies were sent to the Managing Director of the Company as well as the Secretary/Accountant at the Company's office at Kota Kinabalu and to the Sarawak Commercial Employees' Union (SCEU). No averment of malice was ever made.

The appellants do not pretend that the words "shady reputation" are not libellous or that the publication to SCEU is not such a communication to a third party as to take it out of liability. But after a somewhat hesitant start, the defence abandoned any reliance on fair comment made without malice and relied entirely on qualified privilege. It explained that the carbon copy was sent to SCEU because in a letter written the day before, to which the letter containing the libellous words was in fact a reply, the respondent had complained of John Lee's abuse of authority in retrenching him against the principle of "first in, first out" and had in as many words asked the Union to intervene.

The Union did look into the matter. As a result of the intervention by SCEU, the respondent continued in his then employment as an import salesman and it was later agreed that he would be put on 3 months' probation in that capacity. That was on July 17, 1970. But by letter on August 7, 1970, the Company after referring to the respondent's insistence on the transfer of one of two other salesmen (inferentially so that he might have more scope and more opportunity for an increased commission), annual increases for which there was no contractual provision with SCEU and house rent, and after alleging the absence of any improvement, terminated the respondent's employment. The termination was with effect from August 17, 1970 but the respondent was to be paid a further two months' salary up to October 17, 1970 and any commission earned up to the date of the termination.

It was then that the respondent threatened the present action. In the absence of any retraction or apology or agreement to pay damages, he took it and succeeded in the High Court at Kuching. He was awarded $50,000 and costs. From that decision, the defendants appeal to this court. The plaintiff also cross-appeals on the inadequacy of the award.

It is now necessary to advert to more of the events preceding the action.

The respondent was first stationed in Kuching as a salesman. On September 4, 1969, he was appointed the acting clerk in charge of the Miri Branch for a probationary period of 6 months. He accepted the appointment, greatly to the appreciation of his employers. Before this period was up, he was however advised that he would not be confirmed and he was given an option either of returning to Kuching on his previous terms of service or of having his service terminated with an ex-gratia payment of 3 months salary. His plea for reconsideration was turned down and after taking all leave due to him, he finally returned to Kuching on April 16, 1970. There were 2 other salesmen in Kuching and it had been alleged that the respondent desired the transfer of one or the other of

these salesmen. His employers took another view and decided on June 22, 1970 to transfer him, after negotiations with SCEU to the vacant post of a shipping clerk. He accepted but within hours changed his mind.

The respondent then wrote the following letter to John Lee, with carbon copies to the Managing Director of the Company's office at Kota Kinabalu and the Secretary SCEU:

"Kuching, 22nd June. 1970.

The Branch Manager,
N.B.T.,
KUCHING.

Dear Sir,

I refer to our recent conversation on the subject of retrenchment on Import Salesman. You have indicated that the company wish to retrench me. If this is anticipated before I am transferred back from Miri on April 16th, then I would have accepted the 3 months ex-gratia pay. On the contrary I have accepted the offer to be transferred back to Kuching branch to my previous post as a Salesman. Now you have abused your authority to retrench staff not on the basis of 'first in first out'. Would the Union please look into this matter and clarify?

Yours faithfully,
(SGD.)
HENRY WONG JAN FOOK.

c.c. Managing Director, K.K.
c.c. Secretary, SCEU, Kuching."

It was in reply to this letter that John Lee wrote the offending paragraph. The reply was marked private and confidential and the preceding paragraph is in these words:

"Dear Sir,

With reference to your letter dated June 22, 1970 we would advise that upon your transfer back to Kuching from Miri your service has been found to be redundant. After negotiations with officials of the Sarawak Commercial Employees' Union, instead of retrenchment we are offering you alternative employment within the company as a Shipping Clerk as the post is vacant at the present time. After some consideration you have accepted the offer on the morning of 22nd June but turned it down in the afternoon of the same day. If you are not willing to accept the appointment we regret that we do not have another alternative vacant post in this office to offer you. Consequently it would result in definite retrenchment."

Even then matters did not come to a head. SCEU intervened and obtained, as observed earlier, the respondent's retention as a salesman and the letter to him dated July 17, 1970 was to this effect. In that letter it was pointed out to him that the commission earned by him in Kuching was $5.99 for the second half of April, and $14.88 and $13.35 for May and June 1970 respectively. The total for 2½ months was a miserable $34.22. The Company expected a vast improvement.

The charge of a shady reputation is grounded on the following incidents:

While at Miri, the respondent issued first three receipts, Nos. 6097-6099 on August 17, 1970 for $16.20, $104.76 and $187.20 respectively and next a fourth receipt No. 6100 for an earlier date, viz. August 15, 1970 for $59.76 to various dealers. The total was $367.92. Receipts were written in quadruplicate, the Head and Branch offices received the duplicate and the triplicate. In the case of these four receipts, the dealers had the top copy, the Head and the Branch offices did not receive the duplicates and the triplicates respectively while inspection of the receipt book in the possession of the respondent showed the quadruplicates as being cancelled. The respondent, in the event, did not deny that he had received the sums shown in these receipts and he did not venture any explanation why he had failed to carry out the office routine of forwarding copies to the main offices or give any account at any relevant times why he retained and pocketed the money. He did not then claim that there was at any time any money due to him by way of salary, allowances or commission. When he left the service of the Company on August 17, he had this sum of $367.92 from the four payments still with him. It was only after demand had been made of him, that he refunded the money and claimed by his then solicitors that he had retained the money as a "lien" until such times as the salary due to him had been duly settled. The reply really speaks for itself.

Next, one Madam Poh bought a car from the Company for $7,760. Of this purchase price $3,000 had been previously paid. The respondent admitted to receiving a cheque from Madam Poh for the balance of $4,760. He issued a receipt to Madam Poh for this amount, but the duplicate signed also by him showed the name of the payer was another person altogether and the amount shown as paid was a greatly reduced sum of only $149.16. He did not however retain this money. He paid $3,760 into the Company's bank account to the credit of other customers of dealers and on the strength of this payment, he made the startling contention that this manipulation was perfectly in order, he had not made use of other people's money and then used Madam Poh's payment to cover up the shortages. This contention also speaks for itself. No explanation was given for the difference of $1,000 between the receipt of $4,760 and the sum of $3,760 paid in, but by an unexplained process, Madam Poh subsequently paid in another $1,000 and the Company sued the respondent for $3,760.

This evidence which was produced before George Seah J. in a claim for the $3,760 so shocked the learned judge, as well it might any right-thinking person, that he clearly could not understand why no other action than a civil one had been taken and he himself ordered that the proceedings be forwarded to the State Advocate General for the latter's decision as to any further action he might want to take.

This evidence which so shocked the learned [illegible] is the evidence which the respondent could not [illegible] not deny and which the appellants say they [illegible] which constitutes the shady reputation which [illegible] duty and moral obligation to disclose on [illegible] of qualified privilege. They claim that their [illegible] to SCEU was such an occasion.

Another High Court judge who heard [illegible] famation action was not so shocked by [illegible] of the respondent Henry Wong to the finan[illegible] employers. He thought that the appellants' [illegible] defence was provocation. He was perhaps led into so thinking by the submission of counsel for the appellants at the trial in the High Court that the letter of June 23, 1970 was provoked by the accusation of the letter of June 22 of an abuse of authority on the part of John Lee. He considered that the counter-charge

was not a good answer and he came to the conclusion therefore that it was actuated by malice. But the defence was clearly not provocation or justification but qualified privilege.

The letter of June 23 has of course to be read in its entirety. In our reading of it, and with the greatest of respect to the learned trial judge, this letter was not an answer to the charge of an abuse of authority. The first paragraph, supra, conveyed the decision of the Company that in view of the fact that the respondent had now reneged from his agreement to accept the alternative appointment as a shipping clerk, he would be retrenched, since there was no alternative post vacant in the Company to offer him. It then went on to explain why the Company was not anxious to retain him. The reason was his shady reputation.

The choice of the word "shady" may be peculiar or even inappropriate. There is often a great virtue in an accurate description of the factual situation and if the letter had gone on to describe dispassionately and objectively the financial operations of the respondent with moneys that clearly belonged to the Company, then very obviously there could be hardly any cause of complaint, except as to the strict veracity of the account. On the other hand, it is quite often much kinder to the employee in a character reference not to descend to particulars and to use a vaguely descriptive term, often an euphemistic one, to describe the work or character of the employee. But if it is an occasion of qualified privilege, then the concern of the court hearing the defamation action is to decide whether there was a common interest in the party making the defamatory communication and in the party receiving it. This statement of the law on qualified privilege is taken from *Adam* v. *Ward*.[1] It was cited by the learned trial judge himself. Per Lord Finlay L.C. at page 318 and page 162 respectively:

"The law of privilege is well settled. Malice is a necessary element in an action for libel, but from the mere publication of defamatory matter malice is implied, unless the publication were on what is called a privileged occasion. *If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be privileged. This privilege is only qualified, and may be rebutted by proof of express malice.* It is for the judge, and the judge alone, to determine as a matter of law whether the occasion is privileged, unless the circumstances attending it are in dispute, in which case the facts necessary to raise the question of law should be found by the jury."

Emphasising supplied. Somewhat surprisingly, it was not followed in this case.

As has been observed, no dispute arises on the facts as to the retention of the $367.92 by the respondent and the use of the $4,700 or $3,760 received from Madam Poh by him and used by him to pay the outstanding accounts of other customers or dealers. He had a judgment entered against him for the latter amount and he did not appeal therefrom. He refunded the other sum. On these facts it may therefore be asked whether the "shady" is a sufficiently accurate word to use and whether the more accurate word should not be "dishonest". Thought should also perhaps be given to whether the action on the part of the respondent was not criminal in nature. But suffice it to say for the moment that the learned trial judge did not consider the matter of the $367.92 at all and insofar as the $3,760 which the Company successfully recovered from the respondent, he thought that there was no misconduct on the part of the respondent. For this he relied on *Duncan & Neill* on Defamation at paragraph 18.16 at page 137 that since the proceedings for the recovery of the money took place after the publication of the libel, they were not relevant. With the greatest of respect, the passage had been completely misapplied. The court proceedings did in fact take place after the publication of the libel but the events which founded the successful claim occured before the publication of the libel and they were very relevant to the question whether at the date of the publication of the letter, the respondent did or did not have the shady reputation which the appellants said he had.

At law, it is settled that the appellants as defendants to a defamation action must allege and prove all facts and circumstances necessary to bring the words complained of within the protection of qualified privilege. They must prove together with the facts and circumstances, that they have a legal, social or moral right to make the communication to the recipient and the recipient has the corresponding interest or duty to receive it. *Pullman* v. *Hill Ltd.*,[2] *per* Lord Esher M.R. at page 528; *Stuart* v. *Bell*,[3] *per* Lopes L.J. at page 354 and *Adam* v. *Ward, supra, per* Lord Atkinson at page 334. Thus an adverse character reference required by a prospective employer from the previous employer is always held to have been made on a privileged occasion. The giver of the adverse character reference has a duty to refer to the alleged misconduct of his employee so long as it is made without malice and the prospective employer the corresponding right or interest to know. Thus

"If without express *malice*, I made a defamatory charge which I *bona fide* believe to be true, against one whose conduct in the respect defamed has caused me injury, to one whose duty it is...to inquire into and redress such inquiry, the occasion is privileged,"

per Waring v. *M'Caldin*[4] at page 288.

In *Campbell* v. *Cochrane*[5] in reply to a threat of action by a dismissal employee for alleged wrongful dismissal, the employer wrote to the law agent acting for the employee, first, "I found him appropriating my butter to his own use, which butter he was in duty bound to deliver at my house" and secondly, "I do not anticipate any difficulty in proving that he did dishonestly take my butter"; it was held that the statements being made in reply to a threat of legal proceedings and being a relevant defence to such proceedings, were only actionable on an averment of facts and circumstances sufficient to infer malice and that in the absence of any such averment, the defence must succeed, or in the Scottish word used, the defender must be assoilzied.

In our view and with respect, the defence of qualified privilege must also succeed in the case where the recipient of the defamatory statement is a trade union such as the SCEU which has a contractual employment agreement with the commercial employers in Sarawak on behalf of their employees. Though some doubt existed as to the eligibility of the respondent to be such a member, the fact remained that he appealed to this Union to intercede on his behalf and

that the Union did intercede, so that there was a real prospect of either a claim at common law for alleged wrongful dismissal or a claim in the Industrial Court for reinstatement or other relief and also possibly a threat of industrial action. It is clearly in such circumstances that the letter of June 23, 1970 which contained the defamatory statement was carbon copied to the SCEU. There can be no doubt that the statement was made in reply to a threat of legal or industrial action, and was a relevant defence to such proceedings. There can equally be no doubt that the employers of the respondent were under a duty to make the charge to the recipient SCEU as the party which had a right or an interest to receive it: see *White* v. *Batey*[6] where it has been held that a statement by a member of a trade protection society to the secretary of the society as to the trade conduct of another member of the society is within the privilege.

And since the communication was restricted to the SCEU and the employers, clearly it had not gone beyond the exigency of the occasion to avoid the privilege. A statement by a servant to his master as to the character of a fellow servant in the master's employ comes within the privilege: *Scarll* v. *Dixon*[7] and *Mead* v. *Hughes*.[8]

It has been suggested, even if only tentatively, that there was publication to the typist who typed the letter. The short answer is in *Osborn* v. *Boulter*[8] where it was held that defamatory words on a privileged occasion do not lose their privilege by being dictated to a clerk or typist in the ordinary course of business.

The learned trial judge on the evidence before him came to the conclusion that John Lee "recklessly (and) without an honest belief in the truth, with the intention of insulting the plaintiff and in publishing those words, was actuated by malice." With respect, the learned trial judge had not referred to the evidence. Otherwise, he could have only come to an opposite finding that not only had John Lee an honest belief in the truth of what he said, he also had the evidence before him for it. And he had also used words that in the context could only be regarded as more temperate than the action of the respondent deserved. Where the words used were as strong as "most disgraceful and dishonest" but were directly relevant to the occasion, and when, taken in connection with the facts as they appeared to the defendant at the date of the publication, were such as the defendant might have honestly and *bona fide* in the circumstances employed, it was held *inter alia* in *Spill* v. *Maule*,[9] that the judge ought, in the absence of extrinsic evidence of malice, to withdraw the case from the jury and direct judgment to be entered for the defendant. In *Adam* v. *Ward, supra,* after a review of the authorities on excessive language, Lord Dunedin at page 330 said that where the language complained of is "part and parcel of the privileged statement and relevant to it", it should not be submitted to too strict a scrutiny or regarded as evidence of malice merely because it goes beyond what is reasonably necessary to enable the defendant to protect the interest or discharge the duty upon which the qualified privilege is founded. But in the context of this case, the word "shady" must be seen to be more temperate than the word "dishonest" in *Campbell* v. *Cochrane, supra,* where the circumstances are similar.

As for malice, it has already been observed that the statement of claim makes not the slightest reference to any claim of malice on the part of the appellants. If, as a matter of pleading, malice could nevertheless be inferred into the statement of claim, then quite clearly, it was not supportable by any evidence, intrinsic or otherwise. The intrinsic evidence shows that not only had the appellants an honest belief in the truth of the statement but also they had the evidence to support it. They volunteered the information only in anticipation of a request from a trade union in order to abort a claim for reinstatement in or industrial action outside the Industrial Court and outside their own organisation, to this trade union alone. The extrinsic evidence showed that both by their conduct before and during the trial, they had displayed no adverse *animus* against the respondent. They were even prepared to re-employ him and in the position of a salesman which the respondent desired, even though it meant his continued handling of cash and the issue of receipts, in both of which functions, the previous conduct of the respondent had been far from satisfactory or trustworthy and possibly dishonest and criminal. There had been no abuse of the privileged occasion. The communication was by a closed letter and though the request for confidentiality did not *per se* save it from action if the occasion was not privileged, it was to the one party who had a right or interest to know the actual position and to that party alone. The language was not too violent and the charge was not unconnected with or irrelevant to the duty or interest which gave rise to the privilege.

In our respectful view, the conclusion is compelling that there is no evidence of any malice. This must mean that the appeal must be allowed and the cross-appeal dismissed both with costs. The claim of the respondent in the High Court stands dismissed with costs.

In the event that an appeal is made to H.M. the Yang di-Pertuan Agong, we would indicate that had our decision been otherwise, and we had agreed with the trial court that the defamation action succeeded, we would in all the circumstances of this case have allowed the appeal on the damages and dismissed the cross-appeal. An award of $50,000 is so out of line with the awards in this country and in the circumstances of the respondent's life that we would have felt ourselves compelled to interfere. In our view, in the circumstances, the only way in which the defamation action could have succeeded was on the basis that the defamation exceeded the bounds of privilege. There could be no question of aggravated damages. In *Syed Husin Ali* v. *Syarikat Percetakan Utusan Melayu Berhad & Anor.*,[10] Mohamed Azmi J. after a review of all the local cases to date on the amount of damages in defamation actions, awarded a University lecturer who had been falsely accused of dishonesty and disloyalty only $6,500. In *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.*,[11] an elected President of the Malacca Municipality who had been maligned by being called a liar, was awarded $10,000.

An award of $50,000 for a saleman is therefore so out of line with similar cases that it calls for correction by an appeal court. We were not persuaded that the failure of the respondent to secure employment for a period of, as he said, 72½ months was the result of the defamation. And it is to be observed that in his subsequent employment, he was downgraded from an assistant manager in the Miri Theatre at a monthly salary of $280 to an operator at $200 per month after an intermediate post as Manager Roxy Theatre at $350 per month. He did not appear to have given his new employers much satisfaction as an employee. For ourselves we would have thought $8,000 a sufficient recompense.

But our view is that the defence of qualified privilege succeeds, the respondent's claim in the High Court must be dismissed with costs, the appeal allowed and the cross-appeal dismissed with costs. The deposit is to be refunded to the appellants.

Appeal allowed.

Solicitors: *Battenberg & Talma; Thomas & Co.*

DATUK HAJI DZULKIFLI BIN DATUK ABDUL HAMID v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo), Syed Othman F.J., Salleh Abas F.J. & Chong Siew Fai J.) August 18 & October 21, 1980]

[Kota Kinabalu — Federal Court Criminal Appeal No. 3 of 1980]

Criminal Law and Procedure — Official Secrets — Charge of receiving secret official information or secret official document — Communicating information or document — Whether document secret document — Sentence — Official Secrets Act, 1972, s. 8.

Official Secrets — Receiving and communicating secret official document — Official Secrets Act, 1972, s. 8.

In this case the appellant had been convicted on the offences of receiving secret official information and a secret official document and communicating them. The allegation was that the appellant received the copy of a letter from the then Chief Minister of Sabah to the Minister for External Affairs which he knew to be an official secret document and that he had communicated the document to other persons. He stated he received the copy by post through the ordinary mail. The main point raised on the appeal was the question whether the information or document was secret. It was argued that the information and document were inseparable from each other and that the information was no longer secret because the matters pertaining to Philippines refugees in Sabah, with which the letter dealt, were already publicly known and therefore the document was no longer secret.

Held: (1) a document does not lose its status as a secret document merely because some unauthorised person or persons stole it, reproduced a copy and sent the copy by post to the appellant anonymously; nor does it lose its secrecy just because the letter happens to contain information which is already known to the public;

(2) if the originator or the owner of the document treats it and the information contained in it as secret and clearly marks it and keeps it as such, it is not open to anyone to regard it as otherwise. The law must give protection to such a document even though it contains information generally known to the public;

(3) having regard to the evidence in this case the appellant ought to be more appropriately convicted on the charges in respect of the document rather than of the information. The convictions on the principal charges should therefore be set aside and the convictions on the alternative charges confirmed;

(4) the sentences would be reduced to a fine of $1,000 on each of the first and fourth charges and a fine of $1,500 on each of the second and third charges and in default of each fine to a term of three months' imprisonment;

(5) the practice of stealing secret documents and leaking the information contained in them to unauthorised persons is highly dangerous to the country and the court will not hesitate to impose proper and adequate sentences in future, where circumstances merit such punishment.

Case referred to:-

(1) *Lim Kit Siang* v. *Public Prosecutor* [1980] 1 M.L.J. 293.

FEDERAL COURT.

D.J. Puthucheary for the appellant.

Mohtar bin Abdullah (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): To contradict what was reported to have been said by the Chief Minister of Sabah, Datuk Harris Salleh, on the State policy concerning Philippines refugees — which report was published in the New Straits Times on January 9, 1978, under the caption "Sabah will adopt open-door policy towards refugees" and on January 10 under the heading "Harris clarifies his step on refugees", on January 11 Kinabalu Sabah Times (in short K.S. Times) published an article (P3) headlined "Harris open policy on refugees under fire." This article criticized the Chief Minister for the statements he made to the New Straits Times on January 9 and 10. To lend credibility to the article, K.S. Times also published a copy of the letter written by the late Chief Minister, Tuan Haji Mohd. Faud Stephens to Tengku Ahmad Rithauddeen, the Minister of External Affairs. The letter as published in P3 was dated May 11, 1976, and carried a reference "S303/571/86" and had the signature of the late Chief Minister, Tuan Haji Mohd. Fuad Stephens. As published it did not carry the word "Rahsia".

Subsequent police investigation which was carried on pursuant to a report lodged by the Sabah State Secretary, Datuk Haji Abdul Hamid Egoh (PW5), resulted in the appellant being tried on the following charges —

(1) for receiving secret official information, or alternatively secret official document, contrary to section 8(2) of the Official Secrets Act, 1972;

(2) for directly communicating the said information or alternatively the said document to one Jacob Peter Bedion, contrary to section 8(1)(i);

(3) for indirectly communicating the said information or alternatively the said document to one Sabidin Ghani, contrary to section 8(1)(i); and

(4) for not taking reasonable care of the said information or alternatively the said document, contrary to section 8(1)(iv).

The learned trial judge found that the appellant was guilty of all the principal and alternative charges and so convicted him on all these charges. He sentenced the appellant to a fine of $3,000 on each charge or in default of fine to a term of nine months' imprisonment; the sentences on the alternative charges being